



0024

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Moab District
San Rafael Resource Area
P.O. Drawer AB
Price, Utah 84501

IN REPLY

REFER TO:

2810

U-50170

(U-067)

July 5, 1983

RECEIVED
JUL 11 1983DIVISION OF
GAS & MINING

Mr. Karl E. Kingston
Attorney at Law
P. O. Box 15809
Salt Lake City, Utah 84115

Dear Mr. Kingston:

I have received your letter of June 27, 1983 requesting permission for CO-OP Mining Company to continue use of the realigned portion of the Bear Canyon Road.

In a letter dated September 17, 1982 the BLM notified CO-OP Mining Company that they had 30 days after receipt of the letter to present proof of an agreement with Emery County. At that time we took no action to close the road which had been in trespass for over nine months, hoping that the problem would be resolved. Apparently, no progress has been made to date.

I cannot grant special permission to allow use of the realignment as requested, since to do so would countermand the decision already issued on the right-of-way application. Use of the realigned portion of the road on public lands would only be allowed following the granting of a right-of-way. As indicated in the decision, the realignment on public lands is a change of an existing road in the Emery County road system, and the County is the appropriate party to apply for and receive a right-of-way. The County's current right-of-way across public land is documented in a Memorandum of Understanding between Emery County and the Bureau of Land Management, which became effective December 11, 1980.

I am hopeful that the situation between CO-OP Mining Company and Emery County can be resolved satisfactorily, so that the trespass can be closed and a proper right-of-way issued. It is important to all concerned that a safe and adequate access be maintained in this canyon.

Sincerely yours,

Acting

Area Manager

✓ CC: John Whitehead, State of Utah
Natural Resources & Energy,
Oil, Gas & Mining

Carl E. Kingston

ATTORNEY AT LAW

53 WEST ANGELO AVENUE

P. O. BOX 15809

SALT LAKE CITY, UTAH 84115

TELEPHONE (801) 486-1458 or (801) 486-5048

92/PR Rec'd. JUN 30 1983

June 27, 1983

Samuel R. Rowley
U.S. Dept. of the Interior
Bureau of Land Management
Price, Utah

Re: Right-of-Way-Application U-50170

Dear Mr. Rowley:

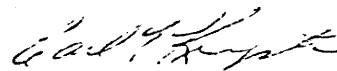
Co-op Mining Company has ceased using the re-alligned portion of Bear Canyon Road as requested in your decision handed down in the above case and is using the old road to enter State Highway 31. The Company has also filed an appeal of your decision and has brought suit against Emery County in State District Court in an attempt to get the issues resolved concerning the road.

Our primary concern in requesting the re-alignment and in pursuing the resulting litigation is the safety of the public using State Road 31, as well as the safety of our own users of Bear Canyon Road. I am sure you are aware of the potential hazzard existing because of the present alignment and intersection of Bear Canyon Road and State Road 31, and I know you can appreciate our concern.

The purpose of this letter is to ask if there is some way that your agency can grant special permission to allow the use of the re-alignment pending a determination of the appeal or of the Emery County lawsuit.

Your consideration of this problem and prompt response to our request, with any suggestions will be appreciated.

Very truly yours,



Carl E. Kingston

CEK/jk



United States Department of the Interior

ACT/015/025
#6

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U-50170
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BUREAU OF LAND MANAGEMENT
Moab District
San Rafael Resource Area
P. O. Drawer AB
Price, Utah 84501

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Certification No. 260872

DECISION

Mr. Wendell Owen
Co-op Mining Company
P.O. Box 1245
Huntington, Utah 84528

:
:
: Right-of-Way Application
: U-50170
:

Application Rejected

On April 30, 1982, Co-op Mining Company filed Right-of-Way Application U-50170 for a coal haul road pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761), crossing over public lands in Emery County, Utah.

In accordance with 43 CFR 2802.4(a)(2), right-of-way application U-50170 has been considered and is rejected because it would not be in public interest for the following reasons:

1. Emery County Road #3-05 already provides access to Bear Creek Canyon, and allowing an additional road in the restricted area causes undue environmental damage.
2. A single road in this area would constitute a realignment of the county road and would require a right-of-way application from Emery County or would require a relinquishment of the county road from them. Emery County has expressed a desire to retain road #3-05 in their road system. They have indicated a willingness to work with you to provide adequate access.

Also, as you know, trespass no. UT-060-6434 was issued to you August 17, 1982, for constructing, without proper authorization, the road proposed in your right-of-way application.

In an Emery County Commission meeting held September 1, 1982, it was mutually agreed that Emery County and the Co-op Mining Company would work out an agreement and Emery County would then file a right-of-way application to realign the county road.

JUN 1 1982

DIVISION OF

LAND

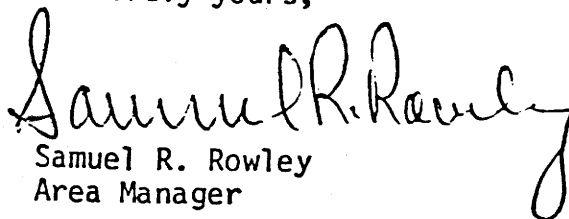
By letter dated September 17, 1982, we allowed you 30 days to provide proof of an agreement with Emery County concerning the road standards and who would have responsibility for construction and maintenance of the road. Proof of that agreement has not been received. In the event that an agreement has been reached with the county, you are allowed five (5) days from receipt of this decision to provide a copy of the agreement to this office. If the agreement is not provided within the time period allowed, you must cease using the road and take the following actions to obliterate the road and rehabilitate the disturbed area:

1. Remove all culverts and other road accessories.
 2. Restore all disturbed areas back to the original contour.
 3. Assure that topsoil to a depth of at least 4 inches is present on the disturbed area after it has been brought to contour.
 4. Cobble-type rocks remaining on the surface shall be randomly scattered over the disturbed area, not left in piles.
 5. All disturbed areas are to be seeded with the seed mixture listed below. Seeding method shall be by drilling and/or harrowing and will be repeated until vegetation is successfully established unless otherwise approved in writing by the Area Manager.
- | Seed Mixture: | Type | Rate (lb/acre) |
|---------------|----------------------|----------------|
| | Indian ricegrass | 2 |
| | Curley grass | 2 |
| | Ephedra (Mormon tea) | 1 |
| | Big sage | 1 |
6. Pinyon tree seedlings are to be planted as determined by the Area Manager.
 7. Vegetative debris removed during construction is to be scattered over the disturbed area following seeding.
 8. A joint compliance check is to be made by your representatives and BLM personnel to determine adequacy of rehabilitation measures.

If the applicant is adversely affected by this action, there is a right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR, Part 4, Subpart E. If an appeal is taken, the notice of appeal must be filed in the office shown on enclosed form 1841-1, (not with the board) so that the casefile can be sent to the Board. A copy of the notice

of appeal and of any statement of reasons, written arguments, or briefs must be served upon any adverse parties, and in addition, to the Regional Solicitor, U.S. Department of the Interior, Room 6201, Federal Building, 125 So. State, Salt Lake City, Utah 84111, within fifteen (15) days of the filing of any specific document. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal.

Sincerely yours,


Samuel R. Rowley
Area Manager

Enclosure:
Form 1842-1